

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE  
LITIGATION

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) MDL No. 1456  
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) Civil Action No. 01-12257-PBS  
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THIS DOCUMENT RELATES TO:

) Judge Patti B. Saris  
)

ALL CLASS ACTIONS

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**SCHERING'S AND WARRICK'S MOTION TO STRIKE PORTIONS OF  
PLAINTIFFS' EXHIBIT 4012**

Schering-Plough Corporation ("Schering") and Warrick Pharmaceuticals Corporation ("Warrick") respectfully move this Court to strike those portions of Plaintiffs' Exhibit 4012 that relate to Schering and Warrick.

On December 18, 2006, the BMS Defendants filed a Statement with Regard to Plaintiffs' Exhibit 4012 (Docket No. 3485). For the reasons stated therein, the Court should strike the exhibit as it relates to purported claims by Blue Cross / Blue Shield of Massachusetts and Pipefitters against Schering and Warrick. The Court should also strike the chart as it relates to Pipefitters' reimbursement of albuterol because Pipefitters is not a Class 2 Representative (as they do not offer Medigap insurance) and albuterol is not in Class 3.<sup>1</sup>

In addition, the Court should strike Plaintiffs' Exhibit 4012 as it relates to Sheet Metal Workers National Health Fund ("SMW") reimbursement of albuterol. *None* of the SMW claims for albuterol show reimbursement paid to a Massachusetts provider. Such

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<sup>1</sup> All claims for albuterol suffer from the problem, identified in the BMS Statement, that the claims data does not identify the manufacturer for multi-source products. Plaintiffs cannot determine, based on the J-code shown on those claims forms and data, whether the albuterol dispensed was manufactured by Schering or Warrick.

claims do not fall within this Court's definition of Class 2 -- "[a]ll Third-Party Payors who made reimbursements for drugs purchased in Massachusetts, or who made reimbursements for drugs and have their principle place of business in Massachusetts, based on AWP for a Medicare Part B covered Subject Drug..." (*See Consolidated Order re: Motion for Class Certification* (Jan. 30, 2006) (Doc. No. 2097), at 4-5.)<sup>2</sup>

Furthermore, all complete SMW claims are for .083% unit dose albuterol (J7619) dispensed in conjunction with ipratropium bromide. As discussed in Schering's and Warrick's Response to Plaintiffs' "Kolassa Confirmation" (Docket No. 3480), most of these claims for .083 % unit dose albuterol (J7619) were not reimbursed based on the median AWP of generic products in that J-code. Those claims that were apparently reimbursed based on the median AWP of products in J-code J7619 should not have been, as such reimbursement was contrary to the methodology described by Plaintiffs in their Statement of Counsel Regarding the "Kolassa Mistake" (Docket No. 3475) and in the DMERC Manual cited therein. (*See* Defs.' Ex. 2976 (Chart of SMW albuterol claims with Schering's and Warrick's comments.)) Accordingly, such claims were subject to audit and adjustment in accordance with the methodology identified in the DMERC Manual.

WHEREFORE, Schering and Warrick respectfully request that this motion be GRANTED.

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<sup>2</sup> The principal place of business of SMW is *not* Massachusetts.

Respectfully submitted,

/s/ John T. Montgomery

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Dated: December 22, 2006

**CERTIFICATE OF SERVICE**

I hereby certify that on December 22, 2006, I caused a true and correct copy of the foregoing to be served on all counsel of record by electronic service pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL 1456.

/s/ Adam Wright

Adam Wright